

JUDGE KAPLAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
QUANTUM CORPORATE FUNDING, LTD.,

Plaintiff,

-against-

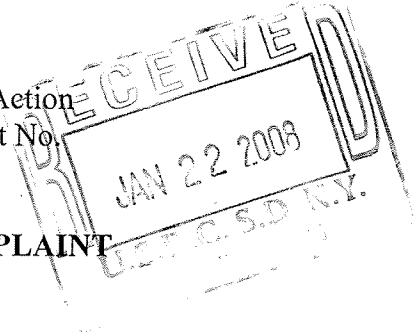
WESTWOOD DESIGN/BUILD
INCORPORATED, DAVID R. WARFIELD,
And NATIONAL CITY MORTGAGE INC.,

Defendants.
-----X

08 CV 00539

Civil Action
Docket No.

COMPLAINT



Plaintiff, Quantum Corporate Funding, Ltd., by its attorneys, Goetz Fitzpatrick, LLP, as and for its Complaint against the defendants alleges, upon information and belief, as follows:

THE PARTIES

1. Plaintiff Quantum Corporate Funding, Ltd. ("Quantum") is a corporation organized and existing under the laws of the State of New York, maintaining its principal place of business located at 1140 Avenue of the Americas, New York, New York 10036 and is engaged in the business of commercial finance.

2. Defendant Westwood Design/Build Incorporated ("Westwood") is a corporation organized and existing under the laws of the State of Maryland maintaining its principal place of business located at 12109 Gordon Avenue, Beltsville, Maryland 20705.

3. Defendant David R. Warfield ("Warfield") is a natural person, a resident of the State of Maryland whose address is 715 East Maple Road, Linthicum Heights, Maryland 21090.

4. Defendant National City Mortgage Inc. ("National") is a corporation organized and existing under the laws of the State of Ohio, maintaining its principal place of business located at 3232 Newmark Drive, Miamisburg, Ohio 45342.

JURISDICTION AND VENUE

5. There is original jurisdiction in this Court pursuant to 28 U.S.C. §1332 since there is diversity of citizenship between plaintiff Quantum and each of the defendants and the amount in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs.

6. Venue lies in this Court pursuant to 28 U.S.C. §1391(a) since a substantial part of the events or omissions giving rise to the claim herein occurred in this district.

FIRST CAUSE OF ACTION AGAINST NATIONAL FOR BREACH OF CONTRACT

7. On or about January, 2007 Mr. and Mrs. Eustace Pollydore, as owners, entered into a contract with defendant Westwood, as contractor, with defendant National, as construction lender, pursuant to which Westwood contracted to construct a new home at 6117 Elm Street, Lanham, Maryland for the Pollydores ("the Project").

8. By virtue of the work and materials furnished by defendant Westwood to the Pollydores for the Project there became due to Westwood from defendant National the sum of \$347,000.00 for which an invoice was rendered by Westwood to National (the "Invoice").

9. Defendant Westwood made an assignment to plaintiff Quantum of the moneys due to Westwood from defendant National on account of the Invoice (the "Assignment").

10. Simultaneously with the Assignment or within a short time thereof, plaintiff Quantum and defendant Westwood each gave notice of the Assignment to defendant National, and National acknowledged receipt of the Assignment.

11. By virtue of the Assignment, there was assigned by defendant Westwood to plaintiff Quantum, the sum of \$347,000.00.

12. By virtue of the foregoing, there became due and owing to plaintiff Quantum from defendant National, the sum of \$347,000.00.

13. Defendant National has refused to pay the Invoice, leaving due and owing to plaintiff Quantum the amount of \$347,000.00 for which demand has been duly made.

**SECOND CAUSE OF ACTION AGAINST
NATIONAL FOR BREACH OF CONTRACT**

14. Plaintiff Quantum repeats and realleges each and every allegation set forth in paragraphs "1" through "13" of this Complaint with the same force and effect as if fully set forth at length hereat.

15. Defendant National issued an estoppel certificate to plaintiff Quantum that the Invoice was correct and owing and that the work and materials invoiced had been completed and accepted (the "Estoppel Certificate").

16. Plaintiff Quantum relied upon the Estoppel Certificate in purchasing the Invoice from Westwood.

17. The \$347,000.00 Invoice amount was acknowledged by defendant National to plaintiff Quantum as being due and owing.

18. By virtue of the foregoing, there was due and owing to plaintiff Quantum from defendant National \$347,000.00.

19. Defendant National has refused to pay Quantum the \$347,000.00 amount due pursuant to the terms of the Estoppel Certificate leaving due and owing to Quantum the amount of \$347,000.00 for which demand has been made.

**FIRST CAUSE OF ACTION AGAINST
WESTWOOD FOR BREACH OF CONTRACT**

20. Plaintiff Quantum repeats and realleges each and every allegation set forth in paragraphs "1" through "19" of this Complaint with the same force and effect as if fully set forth at length hereat.

21. On December 20, 2007, in conjunction with the Assignment made by defendant Westwood to plaintiff Quantum, a Purchase and Sale Agreement (the "Agreement") was made, executed and delivered between Westwood and Quantum.

22. The Agreement set forth certain warranties, representations and covenants by defendant Westwood to plaintiff Quantum regarding the Assignment.

23. Defendant Westwood has breached the warranties, representations and covenants made by it in the Agreement, including those stating that the Invoice was presently due and owing and that there were no set-offs or defenses against the assigned Invoice.

24. Defendant National asserts that the Invoice was not due and owing and that it has set-offs or defenses against the assigned Invoice.

25. As a result of defendant Westwood's breach of the Agreement, plaintiff Quantum has been damaged in the sum of not less than \$347,000.00.

26. Plaintiff Quantum has incurred and will incur attorneys fees in the prosecution of its claims, the extent of which is not yet known, for which defendant Westwood agreed, pursuant to the Agreement, to pay.

27. Due to defendant Westwood's breach of the Agreement, plaintiff Quantum has incurred damages, including attorney's fees, the final amount to be determined at trial.

**FIRST CAUSE OF ACTION AGAINST
WARFIELD FOR BREACH OF CONTRACT**

28. Plaintiff Quantum repeats and realleges each and every allegation set forth in paragraphs "1" through "27" with the same force and effect as if fully set forth at length hereat.

29. In conjunction with the Assignment and the Agreement, defendant Warfield made, executed and delivered to plaintiff Quantum a guarantee (the "Guarantee") in writing whereby he personally guaranteed defendant Westwood's performance of the Agreement's warranties, representations and covenants.

30. Defendant Warfield has failed to perform defendant Westwood's Agreement's warranties, representations and covenants.

31. Defendant Warfield breached his Guarantee of defendant Westwood's Agreements warranties, representations and covenants.

32. As a result of defendant Warfield's breach of this Guarantee, plaintiff Quantum has been damaged in the sum of not less than \$347,000.00.

33. Plaintiff Quantum has incurred and will incur attorneys fee in the prosecution of its claims against defendants Westwood and Warfield, the extent which are not yet known, but for which Warfield agreed, pursuant to his Guarantee, to pay.

34. Due to defendant Warfield's breach of his Guarantee, plaintiff Quantum has incurred damages of not less than \$347,000.00 exclusive of attorneys' fees, the final amount to be determined at trial.

**SECOND CAUSE OF ACTION AGAINST
WESTWOOD AND WARFIELD FOR FRAUD**

35. Plaintiff Quantum repeats and realleges each and every allegation set forth in paragraphs "1" through "34" of this complaint with the same face and effect as it fully set forth herein at length hereat.

36. In or about December 2007, defendants Westwood and Warfield fabricated the Invoice to defendant National, falsely stating that defendant Westwood had performed the work required of it pursuant to its contract with the Pollydores.

37. In or about December 20, 2007, in order to induce plaintiff Quantum to accept from defendant Westwood an assignment of the Invoice, defendants Westwood and Warfield represented to Quantum that the Invoice was presently due and owing and represented an account receivable not subject to any defenses.

38. The representations made by defendants Westwood and Warfield were false, and in truth, the Invoice was worthless and not in fact a good account receivable.

39. When the representations were made by defendants Westwood and Warfield, each knew them to be false and made then with the intent to deceive and defraud plaintiff Quantum and to induce Quantum to accept an assignment of the Invoice.

40. Plaintiff Quantum at the time the representations were made, did not know the truth regarding them but believed them to be true, relied upon them and was, thereby induced to accept an assignment of the Invoice and to pay to or on behalf of defendant Westwood \$242,900.00.

41. Plaintiff Quantum did not know the true facts regarding the Invoice until or about January 11, 2007.

42. The Invoice is worthless and was so at the time it was assigned to Quantum.

43. As a result of the false representations made by the defendants Westwood and Warfield, plaintiff Quantum has been damaged in the sum of \$242,900.00.

**THIRD CAUSE OF ACTION AGAINST
WESTWOOD AND WARFIELD FOR CONVERSION**

44. Plaintiff Quantum repeats and realleges each and every allegation set forth in paragraphs "1" through "43" of this Complaint with the same force and effect as if fully set forth at length thereat.

45. Defendants Westwood and Warfield converted \$242,900.00 belonging to plaintiff Quantum.

WHEREFORE, the plaintiff, Quantum Corporate Funding Ltd., demand judgment as follows:

1. On the First Cause of Action against defendant National City Mortgage Inc., in the sum of \$347,000.00.

2. On the Second Cause of Action against defendant National City Mortgage Inc., in the sum of \$347,000.00.

3. On the First Cause of Action against defendant Westwood Design/Build Incorporated not less than the sum of \$347,000.00.

4. On the First Cause of Action against defendant David R. Warfield not less than the sum of \$347,000.00.

5. On the Second Cause of Action against defendant Westwood Design/Build Incorporated and David R. Warfield, jointly and severally, in the sum of \$242,900.00 together with punitive and exemplary damages in the sum of \$500,000.00.

6. On the Third Cause of Action against defendants Westwood Design/Build Incorporated and David R. Warfield, jointly and severally, in the sum of \$242,900.00 together with punitive and exemplary damages in the sum of \$500,000.00.

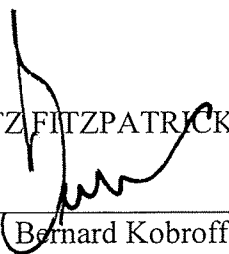
7. Pre-judgment and Post-judgment interest.

8. Costs, disbursements and reasonable attorney's fees in an amount to be determined at trial.

9. Such other and further relief as this Court deems just and proper.

Dated: New York, New York
January 22, 2008

GOETZ FITZPATRICK LLP

By: 
(Bernard Kobroff (BK 0101))

Attorneys for Plaintiff
Quantum Corporate Funding, Ltd.
One Penn Plaza, 44th Floor
New York, New York 10119
(212) 695-8100

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

QUANTUM CORPORATE FUNDING,
LTD.,

Plaintiff,

-v-

WESTWOOD DESIGN/BUILD
INCORPORATED, et al.,

Defendant.

Case No. 08 CV 00539

Rule 7.1 Statement

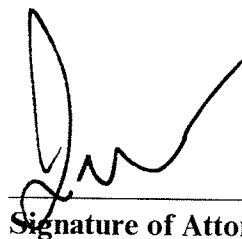
Pursuant to Federal Rule of Civil Procedure 7.1 [formerly Local General Rule 1.9] and to enable District Judges and Magistrate Judges of the Court to evaluate possible disqualification or recusal, the undersigned counsel for

Quantum Corporate Funding, Ltd. (a private non-governmental party)

certifies that the following are corporate parents, affiliates and/or subsidiaries of said party, which are publicly held.

None

Date: January 22, 2008



Signature of Attorney

Attorney Bar Code: BK0101

JS 44C/SDNY
REV. 12/2005

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS

Quantum Corporate Funding, Ltd.

DEFENDANTS

Westwood Design/Build Incorporated;
David R. Warfield; National City Mortgage, Inc.

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Goetz Fitzpatrick LLP
One Penn Plaza, Suite 4401~~New York, New York 10110 (212) 695-8100~~

ATTORNEYS (IF KNOWN)

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

Breach of contract; Fraud; Conversion

Has this or a similar case been previously filed in SDNY at any time? No ☒ Yes? ☐ Judge Previously AssignedIf yes, was this case Vol. ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date _____ & Case No. _____

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

ACTIONS UNDER STATUTES

TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
CONTRACT	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 AGRICULTURE	<input type="checkbox"/> 422 APPEAL
<input type="checkbox"/> 110 INSURANCE	<input type="checkbox"/> 310 AIRPLANE	<input type="checkbox"/> 362 PERSONAL INJURY -	<input type="checkbox"/> 620 FOOD & DRUG	<input type="checkbox"/> 400 STATE
<input type="checkbox"/> 120 MARINE	<input type="checkbox"/> 315 AIRPLANE PRODUCT	MED MALPRACTICE	<input type="checkbox"/> 625 DRUG RELATED	<input type="checkbox"/> 423 WITHDRAWAL
<input type="checkbox"/> 130 MILLER ACT	LIABILITY	<input type="checkbox"/> 365 PERSONAL INJURY	SEIZURE OF	<input type="checkbox"/> 28 USC 158
<input type="checkbox"/> 140 NEGOTIABLE	<input type="checkbox"/> 320 ASSAULT, LIBEL &	PROPERTY	<input type="checkbox"/> 423 WITHDRAWAL	<input type="checkbox"/> 28 USC 157
INSTRUMENT	SLANDER	<input type="checkbox"/> 368 ASBESTOS PERSONAL	PROPERTY RIGHTS	<input type="checkbox"/> 430 BANKS & BANKING
<input type="checkbox"/> 150 RECOVERY OF	<input type="checkbox"/> 330 FEDERAL	INJURY PRODUCT	<input type="checkbox"/> 460 DEPORTATION	<input type="checkbox"/> 430 BANKS & BANKING
OVERPAYMENT &	EMPLOYERS'	LIABILITY	<input type="checkbox"/> 470 RACKETEER INFLU-	<input type="checkbox"/> 450 COMMERCE/ICC
ENFORCEMENT OF	LIABILITY	PERSONAL PROPERTY	<input type="checkbox"/> 820 COPYRIGHTS	<input type="checkbox"/> 460 DEPORTATION
JUDGMENT	<input type="checkbox"/> 340 MARINE	<input type="checkbox"/> 370 OTHER FRAUD	<input type="checkbox"/> 830 PATENT	<input type="checkbox"/> 470 RACKETEER INFLU-
<input type="checkbox"/> 151 MEDICARE ACT	<input type="checkbox"/> 345 MARINE PRODUCT	<input type="checkbox"/> 371 TRUTH IN LENDING	<input type="checkbox"/> 840 TRADEMARK	<input type="checkbox"/> 480 CONSUMER CREDIT
<input type="checkbox"/> 152 RECOVERY OF	LIABILITY	<input type="checkbox"/> 380 OTHER PERSONAL	SOCIAL SECURITY	<input type="checkbox"/> 490 CABLE/SATELLITE TV
DEFAULTED	<input type="checkbox"/> 350 MOTOR VEHICLE	PROPERTY DAMAGE	<input type="checkbox"/> 861 MIA (1395FF)	<input type="checkbox"/> 810 SELECTIVE SERVICE
STUDENT LOANS	<input type="checkbox"/> 355 MOTOR VEHICLE	PRODUCT LIABILITY	<input type="checkbox"/> 862 BLACK LUNG (923)	<input type="checkbox"/> 850 SECURITIES/
(EXCL VETERANS)	PRODUCT LIABILITY	<input type="checkbox"/> 385 PROPERTY DAMAGE	<input type="checkbox"/> 863 DIWC (405(g))	COMMODITIES/
<input type="checkbox"/> 153 RECOVERY OF	<input type="checkbox"/> 360 OTHER PERSONAL	PRODUCT LIABILITY	<input type="checkbox"/> 863 DIWW (405(g))	EXCHANGE
OVERPAYMENT OF	INJURY	LABOR	<input type="checkbox"/> 864 SSID TITLE XVI	<input type="checkbox"/> 875 CUSTOMER
VETERANS BENEFITS		<input type="checkbox"/> 710 FAIR LABOR	<input type="checkbox"/> 865 RSI (405(g))	CHALLENGE
<input type="checkbox"/> 160 STOCKHOLDERS SUITS		STANDARDS ACT		12 USC 3410
<input checked="" type="checkbox"/> 190 OTHER CONTRACT		LABOR/MGMT	FEDERAL TAX SUITS	<input type="checkbox"/> 891 AGRICULTURE ACTS
<input type="checkbox"/> 195 CONTRACT PRODUCT		RELATIONS	<input type="checkbox"/> 870 TAXES	<input type="checkbox"/> 892 ECONOMIC
LIABILITY		LABOR/MGMT	<input type="checkbox"/> 871 IRS-THIRD PARTY	STABILIZATION ACT
<input type="checkbox"/> 196 FRANCHISE		REPORTING &	20 USC 7609	<input type="checkbox"/> 893 ENVIRONMENTAL
		DISCLOSURE ACT		MATTERS
		<input type="checkbox"/> 740 RAILWAY LABOR ACT		<input type="checkbox"/> 894 ENERGY
		<input type="checkbox"/> 790 OTHER LABOR		ALLOCATION ACT
		LITIGATION		<input type="checkbox"/> 895 FREEDOM OF
		<input type="checkbox"/> 791 EMPL RET INC		INFORMATION ACT
		SECURITY ACT		<input type="checkbox"/> 900 APPEAL OF FEE
				DETERMINATION
				UNDER EQUAL ACCESS
				TO JUSTICE
				<input type="checkbox"/> 950 CONSTITUTIONALITY
				OF STATE STATUTES
				<input type="checkbox"/> 890 OTHER STATUTORY
				ACTIONS

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.?
IF SO, STATE:

DEMAND \$ _____ OTHER _____ JUDGE _____ DOCKET NUMBER _____

Check YES only if demanded in complaint

JURY DEMAND: ☐ YES ☒ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(SEE REVERSE)

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

- ☒ 1 Original Proceeding
 ☐ 2a. Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from (Specify District)
 ☐ 6 Multidistrict Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judge Judgment
- ☐ 2b. Removed from State Court
 AND at least one party is a pro se litigant

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

IF DIVERSITY, INDICATE
CITIZENSHIP BELOW.
(28 USC 1332, 1441)

- ☐ 1 U.S. PLAINTIFF
 ☐ 2 U.S. DEFENDANT
 ☐ 3 FEDERAL QUESTION (U.S. NOT A PARTY)
 ☒ 4 DIVERSITY

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF <input type="checkbox"/> 3 <input type="checkbox"/> 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5
CITIZEN OF ANOTHER STATE	<input type="checkbox"/> 2 <input checked="" type="checkbox"/> 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	<input checked="" type="checkbox"/> 4 <input type="checkbox"/> 4	FOREIGN NATION	<input type="checkbox"/> 6 <input type="checkbox"/> 6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Quantum Corporate Funding, Ltd.
1040 Avenue of the Americas
New York, New York 10036
(New York County)

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Westwood Design/Build Incorporated
12109 Gordon Avenue
Beltsville, Maryland 20705

National City Mortgage, Inc.
3232 Newark Drive
Miamisburg, Ohio 45342

David R. Warfield
715 East Maple Road
Linthicum Heights, Maryland 21090

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ FOLEY SQUARE
(DO NOT check either box if this a PRISONER PETITION.)

DATE 1/22/08 SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

[] NO

[x] YES (DATE ADMITTED Mo. Jan. Yr. 1975)

Attorney Bar Code # (BK 0101)

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

J Michael McMahon, Clerk of Court by _____ Deputy Clerk, DATED _____

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)